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| EXAMINER |
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TRUONG, THANH K

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3721

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/042,985
Filing Date: October 19, 2001
Appellant(s): SCHNEIDER ET AL.

MAILED
APR 20 2007
GROUP 3700

Dennis M. Flaherty
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 25, 2007 appealing from the Office action mailed March 14, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|---------------|---------|
| 3,255,869 | H. J. Keller | 6-1966 |
| 4,147,583 | Deutschlander | 4-1979 |
| 5,371,997 | Kopp et al. | 12-1994 |

6,360,513

Strand et al.

3-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 7-11 and 58-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. (6,360,513) in view of H. J. Keller (3,255,869) or Deutschländer (4,147,583) or Kopp et al. (5,371,997).

Strand discloses a package (figures 3 & 5) comprising: a receptacle having a mouth at an upper end; a flexible zipper (20) attached to the mouth and comprising first and second fastener strips; a slider (20a) movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips, the slider having a top at a first elevation and a bottom at a second elevation lower than the first elevation; and a header (11) enclosing the zipper and the slider; the enclosed header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge; the side edges comprising a first and second tear notches (24) formed therein, the first tear notch comprising a termination point disposed at an elevation that is higher than the first elevation, header comprising the line of weakness (12) having a straight portion extending across the header at an elevation

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that is lower than a second elevation (figure 5), the first wall of the header further comprising a first line of weakness (13) traversing a range of elevations encompassing the first and second elevation (figure 5).

Strand further discloses: the first and second header walls are sealed together, the first and second header walls are respectively integrally formed with opposing walls of the receptacle (15 of figure 10);

Strand discloses the claimed invention, but does not expressly disclose that the line of weakness (13) is a slit.

Keller ('869) discloses a receptacle (10) comprising the series of the slits (14) (line of weakness or line of perforation across the top of the receptacle) to provide means to help the consumers to easily remove the top portion of the receptacle (column 2, lines 57-63).

Deutschländer ('583) discloses slit (24, 24') on a receptacle (11) to facilitate the tearing-open of the transverse seam (column 1, lines 33-34).

Kopp ('997) discloses slit (9, 9', 29, 39) on packaging bag (1) providing a tear-open slit for aiding in initiating the tearing of the package (column 1, lines 17-19).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Strand's line weakness (13) by a slit as taught by Keller ('869) or Deutschländer ('583) or Kopp ('997) to provide a means to assist and to facilitate a manual tearing-opening and the removal of the portion of the receptacle (create an opening and providing access to the interior of the receptacle).

Moreover, it appears that Strand's package would perform equally well with the lines of weakness (13), for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit (20) in the present claimed invention is deemed to be a design consideration, which fails to patentably distinguish the claimed invention over the applied prior art.

Furthermore, the lines of weakness (13) comprises a point located both laterally and elevationally near the termination point of the first tear notch.

Strand further discloses: the lower point of the first lines of weakness (13) being further away from the closest one of the first and second side edges than is the upper point of the first lines of weakness (13); the first and second lines of weakness (12) and the first and second lines of weakness (13) are overlapping; and wherein the first line of weakness is a scoreline (column 3, lines 41-43).

(10) Response to Argument

In response to the Appellant's argument that:

"The Examiner concedes that Strand does not teach such a slit, but asserts that each of the three secondary references separately suggests that a slit could be substituted for the line of weakness 13 disclosed in Strand. The Applicants respectfully submit that this logic is unsupportable",

the examiner respectfully disagrees for the following reasons:

The examiner maintains that a line of weakness may include, among others, structures such as perforation, scores, microperforations, or slit. This teaching is expressly disclosed in the references of Strand et al., H. J. Keller, Deutschländer and Kopp et al., and it is mentioned over and over in many of the examiner's office actions.

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To further emphasizes this point, the examiner directs the Appellant's attention to the following supportive documents:

The Appellant's disclosure (page 8, lines 19-31 and page 9, lines 1-2) clearly pointed out that:

"As seen in FIG. 1, the slits 20 are inclined ... Alternatively, lines of weakness may be employed in place of slits, provided that such lines of weakness yield easily when the consumer tries to tear the header open. ... Again, such a line of weakness may comprise a line of spaced slits, a line of spaced perforations, a continuous or discontinuous score-line of thinned header material, a continuous or discontinuous line of pre-weakened header material, or any equivalent structure for providing a line of preferential tearing" (emphases added).

The examiner by no means using the Appellant's disclosure as prior art, but only to point out that Strand's reference has previously been disclosed the very same idea that a line of weakness may include any line that is intentionally designed to be easily torn by the user:

"The term structural weakness is generally used to describe that area of the reclosable bag that is intentionally designed to be easily torn by the consumer ... the term structural weakness should include, without limiting its meaning, structures such as perforation, scores, microperforations, and multiple laminate materials which include a layer having an area of material or materials which are specifically designed to be easily torn." (Strand, column 3, lines 36-50; emphases added.)

Moreover, Keller ('869), Deutschländer ('583) and Kopp ('997) all teach that a slit is intentionally designed to be easily torn by the consumer, and to assist and to facilitate a manual tearing-opening of a header of a bag. Accordingly, the use of the slit as a line of weakness is old and well known in the art and therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Strand's line of weakness (13) by a slit as taught by Keller ('869) or

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Deutschländer ('583) or Kopp ('997) to provide a means to assist and to facilitate a manual tearing-opening and the removal of the portion of the receptacle.

Furthermore, it appears that Strand's package would perform equally well with the lines of weakness (13), for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit (20) in the present claimed invention is deemed to be a design consideration, which fails to patentably distinguish the claimed invention over the prior applied art.

In response to the Appellant's argument, regarding claim 60, the examiner maintains that Strand discloses a first and second tear notches (24) as a "tear initiator" as recited in claim 60.

Finally, in response to the Appellant's arguments that none of the secondary references teach or suggest substituting a single slit for the substantially diagonal arcuate section 13 of Strand, the examiner respectfully disagrees.

Again, the secondary references of Keller ('869), Deutschländer ('583) and Kopp ('997) are relied upon for the teaching that slit is intentionally designed to be easily torn by the consumer, and to assist and to facilitate a manual tearing-opening of a header of a bag.

Strand discloses the claimed invention, and among other things, a second line of weakness 13, but not in the form of a slit, and the examiner's contention is in two folds:

- It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Strand's line of weakness (13) by a slit as taught by Keller ('869) or Deutschländer ('583) or Kopp ('997) to provide a means

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to assist and to facilitate a manual tearing-opening and the removal of the portion of the receptacle (create an opening and providing access to the interior of the receptacle).

- Moreover, it appears that Strand's package would perform equally well with the lines of weakness (13), for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit (20) in the present claimed invention is deemed to be a design consideration, which fails to patentably distinguish the claimed invention over the prior applied art.

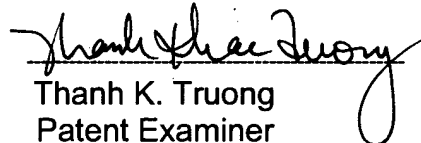
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

tkr
April 4, 2007.


Thanh K. Truong
Patent Examiner

Conferees:

Janet Baxter

Louis Huynh

Thanh K. Truong tkr